

08/203,004

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08/203,004	02/28/94	BERD	D 1225/00674

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HM22/0705

EXAMINER	
UNGAR, S	
ART UNIT	PAPER NUMBER
1642	42

DATE MAILED:

07/05/01

Below is a communication from the EXAMINER in charge of this application

COMMISSIONER OF PATENTS AND TRADEMARKS

ADVISORY ACTION

☒ THE PERIOD FOR RESPONSE:

- a) ☐ is extended to run _____ or continues to run _____ from the date of the final rejection
- b) ☐ expires three months from the date of the final rejection or as of the mailing date of this Advisory Action, whichever is later. In no event however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

☒ Appellant's Brief is due in accordance with 37 CFR 1.192(a).

☒ Applicant's response to the final rejection, filed JUNE 2, 2001 has been considered with the following effect, but it is not deemed to place the application in condition for allowance:

1. ☐ The proposed amendments to the claim and/or specification will not be entered and the final rejection stands because:
- ☐ There is no convincing showing under 37 CFR 1.116(b) why the proposed amendment is necessary and was not earlier presented.
 - ☐ They raise new issues that would require further consideration and/or search. (See Note).
 - ☐ They raise the issue of new matter. (See Note).
 - ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
 - ☐ They present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE:

2. ☐ Newly proposed or amended claims _____ would be allowed if submitted in a separately filed amendment cancelling the non-allowable claims.
3. ☒ Upon the filing of an appeal, the proposed amendment ☒ will be entered ☐ will not be entered and the status of the claims will be as follows:

Claims allowed: None

Claims objected to: None

Claims rejected: 43, 44, 47, 49-51, 54-55, 61-72 + 74-77

However;

☒ Applicant's response has overcome the following rejection(s): Rejection of § 1 43, 49-51, 54-55 under 112 1st

4. ☐ The affidavit, exhibit or request for reconsideration has been considered but does not overcome the rejection because _____
5. ☒ The affidavit or exhibit will not be considered because applicant has not shown good and sufficient reasons why it was not earlier presented.

- ☐ The proposed drawing correction ☐ has ☐ has not been approved by the examiner.
- ☐ Other

SUSAN UNGAR, PH.D.
PRIMARY EXAMINER

Art Unit: 1642

1. The Amendment After-Final filed June 2, 2001 (Paper No. 46) in response to the Office Action of November 29, 2000 (Paper No. 44) is acknowledged and has been entered. Previously pending claims 43 and 47 have been amended. Claims 43, 44, 47, 49-62, 64-72 and 74-77 are currently being examined.

Claim Rejections - 35 USC § 103

2. Claims 47, 65-72 and 74-77 remain rejected under 35 USC 103 for the reasons previously set forth in Paper No. 36, Sections 10-11, pages 8-15, Paper No. 41, Sections 5-6, pages 2-4 and in Paper No. 44, Sections 5 and 6, pages 3-5.

Applicant argues that (a) Examiner gives more weight to the Berd '89 abstract than one of ordinary skill at the time the invention would have given it and the Braun Declaration sets forth that Berd '89 does not describe a successful immunotherapy for melanoma, (b) Applicant details the three basic criteria that must be met to establish a *prima facie* case for obviousness under 35 USC 103 and states that since Berd '89 fails to provide any expectation of success the reference is completely irrelevant and no other reference provided makes up for this flaw, (c) Applicant reiterates the deficiencies of Murphy, Berd '89 Geczy and Antibody Patents and the combination thereof. The arguments have been considered but have not been found persuasive (a') for the reasons previously set forth in Paper No. 41, Section 7, pages 4-5. The Braun Declaration has not been considered because Applicant has not shown good and sufficient reasons why it was not earlier presented, (b') the Berd '89 reference is not irrelevant for the reasons set forth previously and above, (c') the arguments are not persuasive for the reasons previously set forth

Art Unit: 1642

3. Claims 43, 44, 47, 49-62, 64-72, and 74-77 remain rejected under 35 USC 103 for the reasons previously set forth in Paper No. 36, Section 12, pages 15-18, Paper No. 41, Section 7, pages 4-5 and in Paper No. 44, Section 7, pages 5-6.

Applicant reiterates the arguments drawn to Wiseman and the arguments drawn to the combination of Berd '89, The Antibody Patents and Geczy. The arguments have been considered but have not been found persuasive for the reasons previously set forth.


4. Claims 43, 44, 47, 49-62, 64-72, and 74-77 remain rejected under 35 USC 103 for the reasons previously set forth in Paper No. 36, Section 13, pages 18-21, Paper No. 41, Section 8, page 6 and in Paper No. 44, Section 8, page 6.

Applicant reiterates arguments drawn to Berd '83. The arguments have been considered but have not been found persuasive for the reasons previously set forth in Paper Nos 36, 41 and 44.

5. Claims 43, 44, 47, 49-62, 64-72, and 74-77 remain rejected under 35 USC 103 for the reasons previously set forth in Paper No. 36, Section 14, pages 21-25, Paper No. 41, Section 9, page 7 and in Paper No. 44, Section 9, page 7.

Applicant reiterates the arguments previously set forth. The arguments have been considered but have not been found persuasive for the reasons previously set forth in Paper Nos 36, 41 and 44.

6. All other objections and rejections recited in Paper No. 44 are withdrawn.


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PRIMARY EXAMINER